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August 25, 2022
Report 2021-102
FACT SHEET

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Indian Gaming Special Distribution Fund

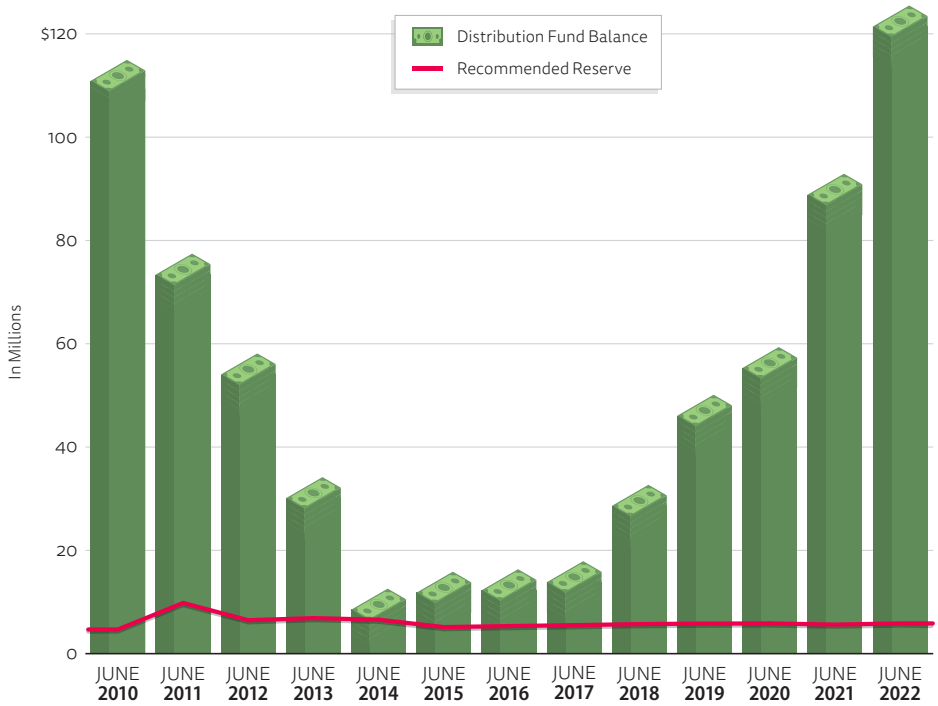
The State Could Better Manage Its Distribution Fund and Its Problem Gambling Programs

Background

The Indian Gaming Special Distribution Fund (distribution fund) exists to pay for specific activities related to tribal gaming, such as regulating tribal casinos and providing services to individuals suffering from problem gambling. Tribes that engage in gaming activities pay fees into the distribution fund for these activities. The California Gambling Control Commission (Gambling Commission), the California Department of Justice (Justice), and the California Department of Public Health (Public Health) each have significant responsibilities that the distribution fund financially supports.

Key Findings

- The State has allowed the distribution fund to accumulate an excessive reserve of $127 million, which is enough to pay for nearly four years of expenditures.
- The State collected from tribes $34 million more in distribution fund fees than it spent on regulatory costs in 2021, contributing to the distribution fund's excessive reserve. Additionally, some tribes with similarly sized gaming operations pay significantly different amounts in distribution fund fees.
- Despite our previous report that found a similar problem, Justice incorrectly charged staff time to the distribution fund for activities that were not related to its tribal gaming regulation activities.
- Public Health's Office of Problem Gambling has not effectively monitored or evaluated its programs, and it is unable to identify whether it is providing effective services. Further, the Office does not have the data it needs to assess the reach of its services, such as the number of individuals who are currently suffering or who have recently suffered from problem gambling.



Key Recommendations

The Legislature should do the following:

- Require the Department of Finance to work with the Gambling Commission to determine an appropriate reserve fund balance and then appropriate the excess reserve consistent with federal and state law.
- Require Justice to calculate and report the amount that it used for nontribal activities and then create a special appropriation to reimburse the distribution fund.

Justice should do the following:

- Reimburse the distribution fund for time that employees spent working on nontribal activities and put controls in place to prevent future charges.

Public Health should do the following:

- Create and include in the strategic plan measurable goals with quantifiable metrics, and create policies and procedures that guide the development of its strategic plans and its program evaluations.
- Obtain and annually update data on the number of Californians who suffer from problem gambling to help better identify the factors that contribute to problem gambling and which populations need problem gambling prevention or treatment services.

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August 2022

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August 25, 2022
2021-102

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

In our office's audit of the management and use of the Indian Gaming Special Distribution Fund (distribution fund) we determined that the State has not effectively managed the distribution fund, and it has allowed the fund to accumulate an excessive reserve. To reach this conclusion, we reviewed records and processes at the California Gambling Control Commission (Gambling Commission), the Department of Finance (Finance), the California Department of Justice (Justice), and the California Department of Public Health (Public Health).

The Gambling Commission and Finance have not determined what constitutes a prudent reserve for the fund and its current reserve would cover nearly four years' expenditures, much more than what a best practice indicates is appropriate. This excessive fund reserve has grown, in part, because the State has not aligned the distribution fund fees that it collects with the State's costs to regulate tribal gaming.

Furthermore, Justice has not reimbursed the distribution fund for more than half of the hours that we identified in a previous audit as having been inappropriately charged to the distribution fund. We also found that Justice continues to improperly charge the distribution fund for nontribal regulatory activities, and Public Health has not demonstrated that it effectively monitors or evaluates the problem gambling prevention and treatment programs for which the distribution fund pays.

Respectfully submitted,

MICHAEL S. TILDEN, CPA
Acting California State Auditor

Selected Abbreviations Used in This Report

GFOA	Government Finance Officers Association
RSTF	Revenue Sharing Trust Fund
SAM	*State Administrative Manual*
SCO	State Controller's Office

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SUMMARY

The Indian Gaming Special Distribution Fund (distribution fund) exists to pay for specific activities related to tribal gaming, such as regulating tribal casinos and providing services to individuals suffering from problem gambling. Tribes that engage in gaming activities pay fees into the distribution fund, and these fees must be used by the State for specific activities.[1] The California Gambling Control Commission (Gambling Commission), the California Department of Justice (Justice), and the California Department of Public Health (Public Health) each have significant responsibilities that the distribution fund financially supports.

The State Has Not Effectively Managed the Distribution Fund

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The State has allowed the distribution fund to accumulate an excessive reserve. As of June 2022, the distribution fund's balance of $127 million was enough to pay for nearly four years of expenditures, significantly higher than the level suggested by a Government Finance Officers Association best practice. Further, the State has not repaid nearly $2 million plus interest from a loan from the distribution fund that has been outstanding for 13 years, preventing either the use of these funds to regulate tribal gaming or their return to the tribes that paid distribution fund fees. Finally, Justice and Public Health have not appropriately used some distribution funds. Justice inappropriately charged staff time to the distribution fund for activities that were not related to its tribal gaming regulatory activities. Public Health incurred catering costs for two training conferences without demonstrating that it performed proper due diligence to ensure that the costs were reasonable.

The State Has Not Ensured That Tribal Payments Align With Its Regulatory Costs

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In 2021 the State collected $34 million more in distribution fund fees from tribes than it spent on regulatory costs, contributing to the distribution fund's excessive reserve. The disparity between the amount the State collected and the amount it spent is in part caused by the fact that its agreements with tribes specify different formulas for calculating the distribution fees the tribes owe. Although some of these formulas are based on the State's regulatory

[1] We use the term *distribution fund fees* to describe the payments tribes pay to the State pursuant to approved compacts.

costs, others are not. Different formulas have also led to tribes with similarly sized gaming operations paying significantly different distribution fund fees. Finally, some tribes' agreements with the State require them to pay additional fees until the fund reaches solvency; three tribes continue to make these additional payments despite the fund's excessive balance.

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Public Health Has Not Demonstrated That It Is Effectively Monitoring Its Problem Gambling Prevention and Treatment Programs

Public Health's Office of Problem Gambling has not effectively evaluated its programs. Because the Office of Problem Gambling has not incorporated into its program evaluation the use of strategic planning best practices, such as creating measurable goals and frequently monitoring progress toward meeting these goals, the office is unable to identify whether it is providing effective services. Further, the office does not have data on the number of individuals who are currently suffering or who have recently suffered from problem gambling—information that would help it better identify which populations need problem gambling prevention or treatment services and the factors that contribute to problem gambling. Until it obtains more current data, the office could take additional steps to assess the reach of its services.

Agency Comments

The Department of Finance and Justice did not state whether they agreed with our recommendations, but indicated that they would implement them. Public Health agreed with our recommendations and indicated that it would implement them.

RECOMMENDATIONS

The following are the recommendations we made as a result of our audit. Descriptions of the findings and conclusions that led to these recommendations can be found in the sections of this report.

Legislature

To ensure that the distribution fund maintains a prudent balance, the Legislature should require Finance to collaborate with the Gambling Commission to determine an appropriate reserve fund balance. The Legislature should then appropriate the excess reserve consistent with federal and state law. For example, it could increase the funding for the problem gambling prevention and treatment programs or it could return excess funds to tribes by refunding a portion of distribution fund fees.

To ensure that the distribution fund receives the remaining amount loaned to the Charity Bingo Mitigation Fund, the Legislature should appropriate $1.7 million plus interest from the State's General Fund to repay the loan.

To determine the amount for the nontribal activities that the Bureau paid for using the distribution fund during fiscal years 2015–16 through 2019–20, the Legislature should require the Department of Justice's Bureau of Gambling Control to calculate and report that information to the Legislature by April 2023. To compensate the distribution fund for these improper expenditures, the Legislature should then create a special appropriation to reimburse the distribution fund.

Finance

To ensure that the conditions requiring tribes to make additional payments into the distribution fund have been fulfilled, Finance should, by December 2022, determine annually whether the distribution fund has satisfied the terms of the relevant compacts and immediately notify the Governor's Office when these provisions have been met.

Justice

To ensure that it compensates the distribution fund for improper charges for nontribal activities including card room and other enforcement activities, by October 2022, the Bureau should do the following:

- Reimburse the funds due to the distribution fund for time that employees spent working on nontribal activities during fiscal years 2020–21 through 2021–22.

- Establish and implement a policy requiring supervisory review and approval of its periodic reimbursements to the distribution fund, as necessary, for time that employees spend on nontribal activities.

To ensure that its employees allocate their activities to the correct funding sources, the Bureau should:

- Formalize procedures for employees on how to properly track their time, including which activities may be charged to the distribution fund, and provide training on those procedures by October 2022.

- Conduct quarterly audits of employee timekeeping to ensure that employees appropriately track their time and that supervisors appropriately review and approve employee timesheets, beginning with the first quarter of fiscal year 2022–23.

- Continue with its planned rollout of a new timekeeping system in January 2025 and ensure that the new system does not allow employees to charge nontribal activities to the distribution fund.

To ensure that it uses the distribution fund only for appropriate purposes, the Bureau should cease its use of the fund to pay for nontribal activities and instead pay for those activities using an appropriate source, such as the General Fund.

Public Health

To ensure that its training conference expenditures are reasonable, the Office of Problem Gambling should, beginning with its next planned catering expenditure, obtain quotes from multiple vendors, document those quotes, and select the vendor that offers the best value.

To ensure that it is able to adequately evaluate its progress toward meeting program goals in its next strategic plan, by February 2023 the Office of Problem Gambling should revise its existing goals. As a part of that process, the office should require staff to do the following:

- Create policies or procedures that guide the quarterly Advisory Group meetings, the development and assessment of its strategic plans, and the evaluation of its programs for these processes.

- Create measurable goals with quantifiable metrics and include them in its strategic plans.

- Evaluate progress toward meeting its goals at least biennially.
- Include any effort remaining to meet program goals in its biennial evaluations.
- Record all Advisory Group meeting minutes and document decisions reached during these meetings.

To ensure that it can better identify which populations need problem gambling prevention or treatment services and the factors that contribute to problem gambling, the Office of Problem Gambling should, as soon as possible, obtain data on the number of Californians who currently suffer or have recently suffered from problem gambling. The office should also update this information annually and use it to identify the locations and populations most in need of program service and to evaluate how well it is serving that population. Until it obtains this information, the office should take additional steps to determine whether it is providing services to a reasonable number of individuals by comparing its programs to those in other states.

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INTRODUCTION

Background

State law established the Indian Gaming Special Distribution Fund (distribution fund) effective January 2000 to pay for specific activities related to tribal gaming, such as regulating gaming operations and providing funding for programs to treat gambling addiction. A tribe that operates certain gaming activities (gaming tribes) can enter into an agreement (compact) with the State or an alternate agreement with the federal government that governs the way that the tribe conducts gaming operations in California.[2] These compacts subject tribal gaming operations to state regulation. As of June 2022, the California Gambling Control Commission (Gambling Commission) reported that 79 tribes within California had compacts with the State or alternate agreements with the federal government. The Gambling Commission stated that among those were 63 tribes that operate a total of 66 casinos in California. The compacts require gaming tribes to pay a specified amount of their revenues from gaming activities into the distribution fund (distribution fund fees), which the State may only use for certain purposes.[3]

Allowable Uses of Distribution Funds

State law establishes the allowable uses for the distribution fund, which include paying for costs that the State incurs to regulate tribal gaming and to operate problem gambling treatment and prevention programs (regulatory costs). State law also specifies the priority uses for the distribution fund, which the text box lists in descending order of priority. Although state law allows appropriations to support local government agencies impacted by tribal gaming, the State has not appropriated funds for this purpose since fiscal year 2014–15, as we describe later in the report. Additionally, compacts describe in detail allowable uses for distribution funds, which generally align with those uses in state law.

Priority Uses of Distribution Funds

- Payments to cover shortfalls in the Indian Gaming Revenue Sharing Trust Fund (RSTF), which distributes funding to tribes that do not significantly participate in gaming activities.
- Appropriations for programs designed to address problem gambling prevention.
- Compensation for the State's cost of regulating tribal gaming.
- Appropriations to support local government agencies impacted by tribal gaming.

Source: State law.

[2] The alternate agreements are known as *secretarial procedures*, tribal gaming agreements that have been executed with the U.S. Department of the Interior rather than through the State. However, they have provisions similar to tribal compacts. For the purposes of this report, we are referring to secretarial procedures as compacts.

[3] On May 12, 2020, a lawsuit titled *Lucky Chances, Inc. et al. v. the State of California* was brought against the Gambling Commission and the California Department of Justice's Bureau of Gambling Control (Bureau) alleging that the defendant's regulatory fees on private card rooms are unlawful taxes. Our audit scope does not include the fees that private card rooms have paid and are litigating.

Responsibilities of Various Agencies

The Gambling Commission, Justice, and the California Department of Public Health (Public Health) each have significant responsibilities that are financially supported by the distribution fund. As Figure 1 describes, the Gambling Commission and Justice's Bureau have direct responsibilities related to the regulation of tribal gaming and administering the provisions of the compacts. In addition, Public Health's Office of Problem Gambling establishes and operates treatment and prevention programs related to problem gambling. The office of the Governor (Governor's Office) negotiates and executes compacts with tribes and is responsible for overseeing and implementing government-to-government consultation between the Governor's administration and California tribes. However, the Governor's Office does not receive funding from the distribution fund, and we did not audit it.

Distribution Fund Appropriations

To accomplish the distribution fund's purposes, the Legislature annually appropriates money from the fund to selected agencies. From fiscal years 2019–20 through 2021–22, the Legislature appropriated about $100 million from the fund. Table 1 shows the amount of funding appropriated to each agency for those years as well as the primary uses of the funds at each agency.

Figure 1
State Agency Roles and Responsibilities Related to Tribal Gaming

Source: State law, agency webpages, Office of Problem Gambling fact sheet, and staff interviews.

Table 1
Distribution Fund Appropriations for Fiscal Years 2019–20 Through 2021–22
(in Thousands)

AGENCY (BY PROGRAM) OR FUND	DESCRIPTION	APPROPRIATIONS BY FISCAL YEAR 2019–20	2020–21	2021–22
Justice				
Division of Legal Services	To provide legal services to state entities and for bringing actions on behalf of the Attorney General to protect the public.	$2,000	$2,000	$2,000
Law Enforcement Division	To regulate legal gambling activities in California and ensure that gambling is conducted honestly and free from criminal and corruptive elements.	18,000	17,000	19,000
Subtotals		**$20,000**	**$19,000**	**$21,000**
Gambling Commission				
State Operations	To regulate tribal gaming by, among other activities, distributing tribal gaming revenues to tribes without compacts, making suitability determinations for tribal employees, and administering the distribution fund.	$3,000	$3,000	$3,000
Subtotals		**$3,000**	**$3,000**	**$3,000**
Public Health				
Public and Environmental Health	To support the Office of Problem Gambling's operations and its problem gambling prevention program.	$4,000	$4,000	$4,000
Public and Environmental Health (Local Assistance)	To support local communities and reimburse problem gambling treatment providers.	4,000	4,000	4,000
Subtotals		**$8,000**	**$8,000**	**$8,000**
Statewide General Administrative and Other Expenditures				
	For the distribution fund's proportional share of the State's cost of providing central administrative services to departments and funding sources.	$2,000	$2,000	$2,000
Subtotals		**$2,000**	**$2,000**	**$2,000**
TOTALS*		**$33,000**	**$32,000**	**$34,000**

Source: Fiscal years 2021–22 and 2022–23 state budget summaries from the Department of Finance's (Finance's) website and interviews with staff at Public Health.

* We have rounded the numbers we present in the table above. As a result, the total expenditures shown may not match the figures from the budget summaries.

The State Has Not Effectively Managed the Distribution Fund

Key Points

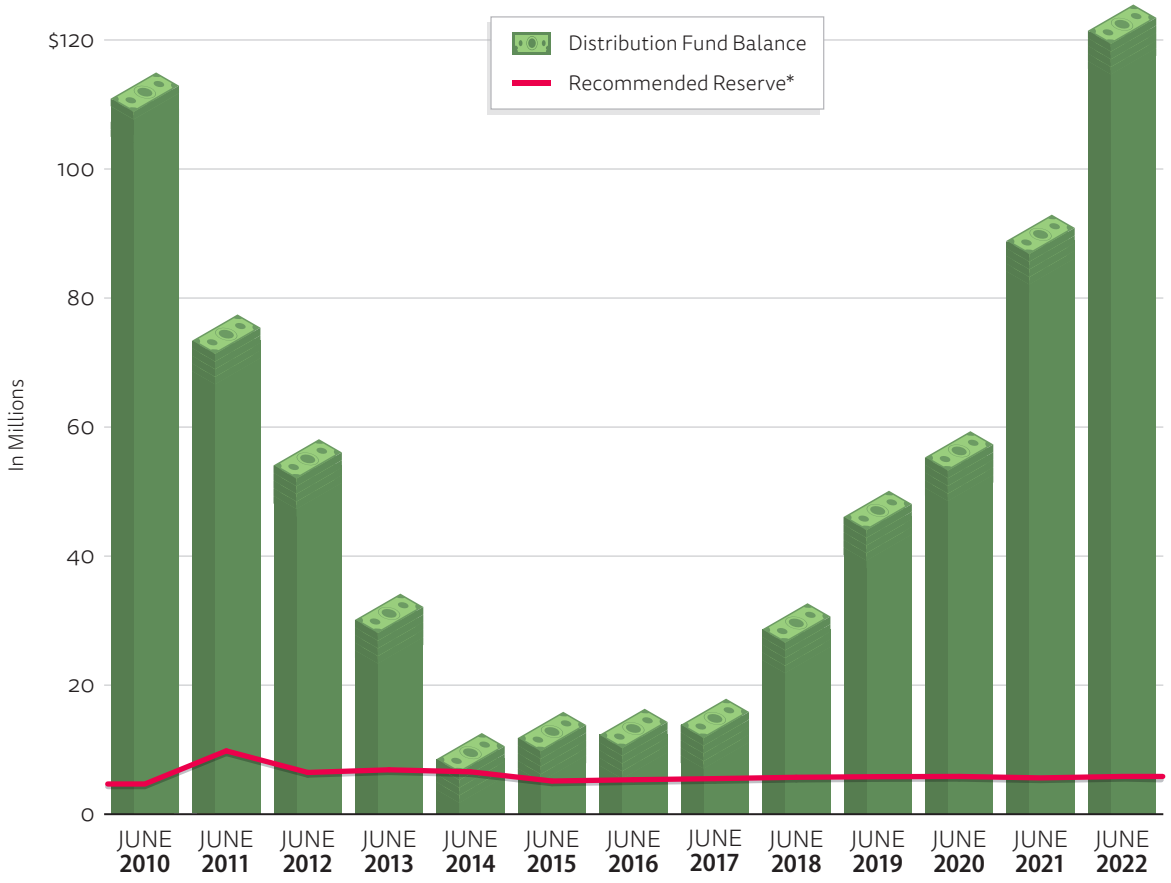
- The distribution fund's balance is significantly larger than necessary to cover its costs, likely in part because the Gambling Commission and Finance have not identified a prudent reserve level for the fund. At the end of fiscal year 2021–22, the distribution fund's balance was $127 million, an amount equal to nearly four years of distribution fund expenditures.
- The State has not repaid the distribution fund nearly $2 million plus interest from a loan made in fiscal year 2008–09. This outstanding loan balance prevents the State from using these funds for their intended purposes or returning them to the tribes that pay into the fund.
- A 2019 audit by our office found that Justice had inappropriately charged the distribution fund for 27,000 hours of nontribal gaming enforcement activities. During this audit, we found that Justice had not fully reimbursed the distribution fund and that it has continued to inappropriately charge the distribution fund for a range of nontribal activities.
- The Office of Problem Gambling spent distribution funds on catering costs for its problem gambling training conferences in 2019 and 2020 but did not demonstrate that its costs were reasonable.

The State Has Allowed the Distribution Fund to Accumulate an Excessive Reserve

The distribution fund's balance is significantly larger than necessary to cover its costs. Guidance from the Government Finance Officers Association (GFOA) recommends that general purpose governments maintain a minimum fund balance of two months of general fund operating expenditures or revenue.[4] In fiscal year 2021–22, two months of the distribution fund's expenditures equaled $5.9 million and two months of its revenue equaled $11.2 million. GFOA guidance also suggests that special revenue funds that are legally restricted to a specific purpose, such as the distribution fund, may need an even smaller fund balance. However, as of June 2022, the distribution fund's balance was $127 million, equivalent to nearly four years of expenditures based on its average expenditures in recent years. This amount significantly exceeds GFOA's recommended minimum reserve. Further, Figure 2 shows the fund balance over the past 13 years, demonstrating that the excessive reserve problem has existed for most of that period.

[4] The GFOA, whose mission is to advance excellence in public finance, represents public finance officials throughout the United States and Canada through its membership of more than 20,000 federal, state, provincial, and local finance officials.

Figure 2
The Distribution Fund's Reserve Balance Has Grown Excessively in Recent Years



Source: Finance, Schedule 10 Statements (Summary of Fund Condition), and GFOA Fund Balance Guidelines for the General Fund.

* Based on two months' worth of expenditures, per GFOA best practices.

The distribution fund has accumulated an excessively large balance because the State has collected a greater amount of money in distribution fund fees than it has spent on associated regulatory costs. In 2021 alone, the State collected an excess of $34 million in fees. Several factors have contributed to the imbalance between the fund's revenue and expenditures. First, as we describe in more detail later in the report, some tribes pay distribution fund fees that are not tied to their proportion of the State's regulatory costs. Second, the State no longer relies on the distribution fund to pay for certain activities. Effective January 1, 2021, the Legislature repealed the statute related to the awarding and administering of grants from the distribution fund to local governments for mitigating the effects of gambling in communities surrounding tribal casinos. In fact, the State had not used the distribution fund for these grants since fiscal year 2014–15. An audit report our office issued in March 2017 found

that new and amended compacts from fiscal years 2003–04 through 2015–16 generally included provisions requiring tribes to negotiate directly with local governments for these payments.[5]

Finally, the large balance of a related state fund—the RSTF—has led the State to stop transferring money out of the distribution fund. The State created the RSTF so that it could collect additional shares of revenue from tribes with gaming operations to distribute to tribes with limited or no gaming activities. As we describe earlier in this report, the highest priority use of the distribution fund is to ensure that the RSTF has sufficient funding to fulfill its purpose. However, the RSTF has not experienced any shortfalls in revenue since fiscal year 2016–17, and consequently the State has not transferred money from the distribution fund to the RSTF in several years.

The senior advisor for tribal negotiations for the Governor's Office stated that compacts negotiated in 1999 included specific funding provisions for using the distribution fund to ensure that the RSTF could provide money to tribes with limited or no gaming and that this funding is also provided for under new compacts and state law. He also stated that whether future transfers to the RSTF will be necessary to cover any shortfalls will depend on the terms of numerous compacts that will replace the compacts that are expiring over the next two years. The Gambling Commission's executive director similarly explained that the RSTF is solvent and is projected to remain solvent. However, because the Gambling Commission is not involved in compact negotiations, it is unaware of possible changes to their terms that could affect the need for future transfers to the RSTF. For these reasons, we conclude that the already excessive balance in the distribution fund may increase more rapidly in the coming years than it has historically.

In addition to the trend in excess distribution fund revenue, the Gambling Commission and Finance have not determined what constitutes a prudent reserve. The *State Administrative Manual* (SAM)—a reference resource for statewide policies, procedures, and requirements—requires the Gambling Commission to work with Finance to determine a prudent reserve amount. However, these entities have not done so. The Gambling Commission's executive director stated that it is not the Commission's responsibility to inform the Legislature how to appropriate distribution funds or to inform them of the existing reserve, but that the Commission does report fund information and ensures that it is accurate. For its part, Finance stated that it does not have a benchmark to determine the reasonableness of the distribution fund's reserve balance and that its focus is on fund reconciliations and monitoring for solvency.

The State Administrative Manual requires the Gambling Commission to work with Finance to determine a prudent reserve amount. However, these entities have not done so.

[5] *Indian Gaming Special Distribution Fund: The Method Used to Mitigate Casino Impacts Has Changed, and Two Counties' Benefit Committees Did Not Ensure Compliance With State Law When Awarding Grants*, Report 2016-036, March 2017.

However, without a target for a prudent reserve amount, the State lacks an important tool for managing the fund and measuring whether it is collecting excessive amounts of money from tribes.

Without deliberate action from the Legislature, the distribution fund balance will remain excessive.

As part of our review, we considered the likelihood of a future scenario that would cause the distribution fund reserve to return to reasonable levels without external intervention. We identified no such scenario. In the immediate term, without deliberate action from the Legislature, the distribution fund balance will remain excessive.

There are two distinct steps the Legislature should take to help ensure that the fund has sufficient, but not excessive, funding to fulfill its purposes. First, the Legislature should direct the Gambling Commission and Finance to identify a prudent reserve amount. Second, the Legislature should decide how to reduce the fund balance until it reaches that amount. One option for reducing the balance would be for the Legislature to increase the appropriations from the distribution fund for allowable activities. For example, the Legislature could decide to increase funding for the problem gambling prevention and treatment programs. Either alternatively or in addition to increased appropriations, the Legislature could return excess funding to tribes by refunding a portion of their distribution fund fees.

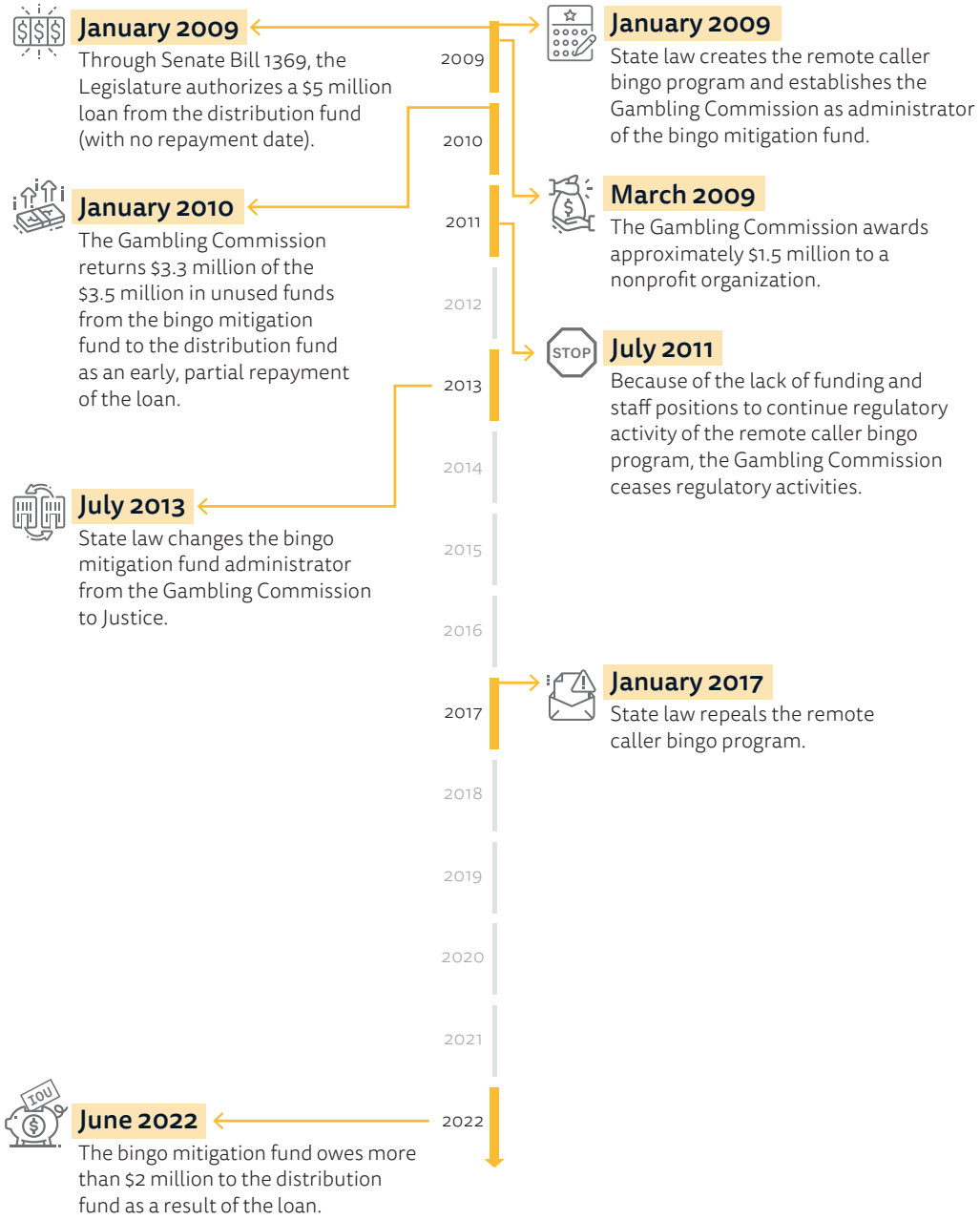
The State Has Not Repaid $2 Million for a Loan From the Distribution Fund in Fiscal Year 2008–09

The State has not ensured that it repaid nearly $2 million plus interest from an outstanding loan from the distribution fund, preventing either the use of these funds for their intended purposes or their return to tribes. In fiscal year 2008–09, state law established a remote caller bingo program to provide funding to help nonprofit and charitable organizations conduct fundraising. The law also created the Charity Bingo Mitigation Fund (bingo mitigation fund) and authorized a $5 million loan from the distribution fund to that fund to ease organizations' costs of transitioning to remote bingo games. The law designated the Gambling Commission as the administrator of the bingo mitigation fund, made it responsible for awarding the mitigation funding, and required nonprofit and charitable organizations to pay a percentage of revenue from each remote caller bingo game to the Gambling Commission until the loan was reimbursed. However, the State repealed the remote caller bingo statute, effective January 1, 2017, before the full loan amount was repaid.

The bingo mitigation fund does not have sufficient funds to repay the remaining loan amount. As Figure 3 shows, the Gambling Commission awarded one grant of about $1.5 million from the bingo mitigation fund to a nonprofit organization. Further, before state law repealed the program, the Gambling Commission returned

$3.3 million of the loan amount—along with $200,000 in interest due on the loan—from the bingo mitigation fund to the distribution fund. The bingo mitigation fund's remaining balance of $5,000 is not sufficient to repay the remaining debt of $1.7 million plus accrued interest of more than $370,000.

Figure 3
The State Has Not Repaid $2 Million for a 2009 Loan From the Distribution Fund



Source: State law, the Gambling Commission's report to the Legislature, and staff interviews at the Gambling Commission.

Until the State repays this remaining loan balance and interest, $2 million is not available either to pay for important regulatory activities or for the use of the tribes that pay into the fund. The Legislature will need to take action to ensure repayment. When passing the law that established the remote caller bingo program, the Legislature intended the loan to be paid back by the participating organizations. However, the law did not identify a responsible party for ensuring repayment in the event that those organizations could not do so. SAM identifies the authority and responsibilities of fund administrators, but that guidance does not include information regarding loan repayments.

Key stakeholders cannot agree on who is responsible for ensuring repayment of the loan.

Key stakeholders also cannot agree on who is responsible for ensuring the repayment, further underscoring the lack of clarity regarding the loan. As Figure 3 shows, the administrator of the bingo mitigation fund changed from the Gambling Commission to Justice in July 2013. The Gambling Commission believes that Justice—the current administrator of the bingo mitigation fund—accepted responsibility for ensuring the loan repayment; when it took over as fund administrator, while Justice directed our question about repayment back to the Gambling Commission because the Gambling Commission was the fund administrator at the time the loan was issued. A Finance budget analyst informed us that although Finance provides guidance and direction to departments regarding loan repayments and other fiscal issues through the annual budget development process, it is not directly involved in determining responsibility for repayment of a loan.

In the absence of clarity about who should ensure repayment and with what resources, the Legislature—if it decides to repay the loan—could do so through the State's General Fund, the State's primary source of funding for state government. The Finance budget analyst was not sure whether the General Fund is a guarantor for repayment of the loan or whether the distribution fund could write off a loan as uncollectable. According to communications between Justice and the State Controller's Office (SCO), the final interest amount cannot be determined until a repayment date is set for the loan. The SCO calculated the $370,000 interest amount based on a repayment date of June 30, 2022.

The Bureau Continues to Inappropriately Use Distribution Fund Revenue for Nontribal Purposes

For several years, the Bureau has improperly used the distribution fund to pay for nontribal gaming enforcement activities. Our office's 2019 audit of the Bureau found that from fiscal years 2015–16 through 2017–18, the Bureau inappropriately charged the distribution fund for more than 27,000 hours that employees within its compliance and enforcement section spent on work related to card

room enforcement.[6] These inappropriate charges occurred in part because the Bureau had no process in place to reimburse the distribution fund when employees whose positions were supported by the distribution fund (tribal employees) spent time on activities that were unrelated to tribal gaming and therefore should not have been paid from the distribution fund (nontribal activities). Tribal employees sometimes spent significant portions of their time on such nontribal activities. For example, the Bureau's fiscal year 2017–18 records for employees within its audits and compacts compliance section indicate that those employees spent a collective 35 percent of their time on card room activities, which are distinct from tribal gaming activities and funded by a separate fund, the gambling control fund.[7]

Nevertheless, following our audit, the Bureau did not fully reimburse the distribution fund for these costs for the three-year period in question. According to its assistant director, the Bureau recognized that it had been inappropriately charging the distribution fund during a review of its timekeeping practices that it initiated in early 2018. He stated that the Bureau initiated that review because card room representatives had expressed concerns about the Bureau's use of funds it had received from the gambling control fund. Shortly before the release of our May 2019 report, the Bureau reimbursed the distribution fund about $440,000 for time that employees in its compliance and enforcement section spent on nontribal activities. However, that amount represented fewer than half of the hours that we determined had been inappropriately charged to the fund. Accounting staff at Justice explained that the Bureau was unable to reimburse the fund for hours charged to it in fiscal year 2015–16 because the Bureau's appropriation for that year had already reverted, meaning that the Bureau could no longer access it. The Bureau's administrative manager could not explain why the Bureau had not reimbursed the distribution fund for the remaining hours for the other two fiscal years because the person who calculated the reimbursement amount no longer works at the Bureau, and the administrative manager was not able to provide documentation of the methodology that person used.

Although the Bureau has since instituted a process to reimburse the distribution fund for the time that tribal employees spend on nontribal activities, shortcomings in its approach prevented us from determining the number of hours it has already reimbursed and whether its reimbursements were for the correct number of hours. We reviewed the Bureau's reimbursements to the distribution

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6 *Bureau of Gambling Control and California Gambling Control Commission: Their Licensing Processes Are Inefficient and Foster Unequal Treatment of Applicants*, Report 2018-132, May 2019.

7 The gambling control fund is a state fund that Justice and the Gambling Commission use to fund their regulation of card rooms in the State.

fund for fiscal years 2018–19 through 2020–21 and found that the Bureau frequently either did not document the total hours for which it had reimbursed the distribution fund or documented them incorrectly. Therefore, although the Bureau's records show that during that three-year period, it reimbursed the distribution fund nearly $2.5 million for time that tribal employees spent on nontribal activities, this amount may not represent a complete and accurate reimbursement.

Additionally, we found several errors in the Bureau's execution of those reimbursements. In some cases, the Bureau determined that it needed to reimburse the distribution fund for time spent on nontribal activities but did not do so. In others, the Bureau reimbursed the fund for the incorrect amount. These errors likely occurred because the person who prepared the reimbursement was the same person who approved it in all but one instance. Allowing the same person to prepare and approve the reimbursements is a weakness in the Bureau's reimbursement process, and if not corrected, it may lead to continued errors. After we notified the Bureau of these errors, the administrative manager who oversees the expenditure corrections process provided documentation that the Bureau had begun correcting the errors for fiscal year 2020–21 but explained that it could not correct the errors made in the preceding two years because the fund appropriation had already reverted. She provided documentation showing that the Bureau has recently had a separate individual approving expenditure corrections; however, the Bureau lacks a formal policy requiring this practice.

Examples of activities that tribal employees improperly charged to the distribution fund under the general law enforcement category:

- Checking a local flea market for slot machines.
- Providing building security for Justice headquarters during protests.
- Investigating in-home poker games.
- Investigating Internet cafés.
- Assisting with wildfire response.
- Investigating illegal card rooms.

Source: Bureau timekeeping records from fiscal years 2018–19 through 2020–21.

The Bureau has also continued to charge the distribution fund for nontribal activities, although we were unable to identify the extent of these incorrect charges. For fiscal years 2018–19 through 2020–21, the Bureau's tribal employees charged more than 2,200 hours of card-room enforcement activities to the distribution fund, as well as a smaller number of hours for activities such as providing protective services for the Office of the Attorney General (Attorney General) and assisting the Bureau of Firearms with investigations. However, the total number of inappropriately charged hours is unclear because tribal employees also charged large portions of their time—a collective 26 percent—under a broad and vague category called *general law enforcement*. In some cases, as the text box shows, the activities that employees charged to the distribution fund under the general law enforcement category

were clearly unrelated to tribal gaming. However, in other cases, employees charged time to that category but did not provide specific information about the type of work they were performing—preventing us from determining whether the costs for those hours should have been paid by or reimbursed to the distribution fund.

There are two primary reasons why Bureau employees have continued to inappropriately charge the distribution fund for nontribal activities. First, the Bureau has not exercised sufficient oversight to ensure that employees correctly track their time. These inappropriate charges occurred despite both a policy requiring employees to track their time based on the nature of the work they perform and procedures directing supervisors to review and approve employee timesheets. The Bureau's assistant director attributed these errors to staff's still learning how to properly report their time. However, Bureau employees continued to charge nontribal activities to the distribution fund in fiscal year 2020–21, more than one year after the Bureau established its timekeeping policy, which—with proper oversight by the Bureau—should have been enough time for employees to learn how to report their time.

Bureau employees continued to charge nontribal activities to the distribution fund more than one year after the Bureau established its timekeeping policy, which should have been enough time for employees to learn how to report their time.

Given the ongoing nature of this problem, a more effective safeguard against improper timekeeping charges would be for the Bureau to update its timekeeping software to prevent employees from being able to charge the distribution fund for nontribal activities. However, the assistant director stated that the Bureau cannot make such an update to its current timekeeping system. He indicated that the Bureau is pursuing new timekeeping software and plans to roll out the new system in January 2025. Given that the Bureau agreed with our recommendation to improve its timekeeping system in response to our 2019 audit—more than three years ago—we are concerned that it still has not made substantive progress in this area.

The second reason why Bureau employees have inappropriately charged the distribution fund for nontribal activities is that the Bureau has instructed its staff to do so in certain circumstances. The assistant director explained that employees sometimes must perform law enforcement duties, such as investigating illegal gambling, that are not authorized uses of the distribution fund, but that the Bureau generally does not have authority to access any other funding source. He indicated that as a result, the Bureau intentionally has employees charge this type of activity to their default funding sources, meaning that the Bureau charges any such work that tribal employees perform to the distribution fund. He further stated that although illegal gambling is not related to tribal gaming, it does affect it.

State law does not specifically prohibit the use of the distribution fund to pay for nontribal law enforcement activities. However, these uses appear to be inconsistent with the intended uses of the distribution fund as outlined in the compacts between the State and the tribes that pay into the fund. Further, they are not among the priority uses of the fund listed in state law. Figure 4 describes some of the issues with Justice's charges to the distribution fund that we identified during our review.

Figure 4
The Bureau Has Continued to Inappropriately Charge the Distribution Fund for Nontribal Activities

Source: Bureau timekeeping and financial records for fiscal years 2015–16 through 2020–21.

The persistent shortcomings in the Bureau's processes prevented us from determining the full effect of the inappropriate charges on the State's total regulatory costs and, therefore, on the amount of distribution fund fees paid by some tribes. As we describe later in the report, some tribes' distribution fund fees are tied closely to annual expenditures from the distribution fund. Nonetheless, even when accounting for the possible effect of the errors we describe, the total amount of these inappropriate charges represents only a small percentage of the Bureau's total share of the annual appropriation from the fund. As a result, although the Bureau's incorrectly charged costs represent an improper use of the distribution fund, they are not likely to have significantly affected the amount of distribution fund fees individual tribes have paid.

The Office of Problem Gambling Did Not Ensure That the Distribution Funds It Spent on Catering Were Reasonable

The Office of Problem Gambling used distribution funds for two catering events without ensuring the costs were reasonable. We reviewed 15 expenditures each at the Gambling Commission, Justice, and Public Health for fiscal years 2018–19 through 2020–21 to determine whether the expenditures were for allowable uses specified in the tribal compacts and state law. The expenditures we reviewed at the Gambling Commission and Justice were generally both allowable and reasonable. However, we found that two catering expenditures by Public Health's Office of Problem Gambling, totaling $24,200 and $35,800 for its problem gambling training conferences in 2019 and 2020 respectively, may not have been reasonable.

Although the use of distribution funds for training is allowable under state law and the compacts, the office did not ensure the amounts of these catering expenditures were reasonable. We compared these catering costs against the standard state per diem meal rate of $41 per person per day—the maximum daily reimbursement amount that state employees may claim for meal costs incurred while traveling for work-related purposes. We found that the office's catering costs were higher than the per diem rate, with daily food costs being as much as $126 per person per day. Based on this comparison, the office's catering expenditures from 2019 and 2020 exceeded reasonable costs by $14,700 and $18,900, respectively. The office's substance and addiction prevention branch chief stated that the State's meal reimbursement rates are not a reasonable comparison to catering costs for the conferences because those rates do not account for service costs that are typically incurred with catering, such as setup, breakdown, beverage refreshening, and serving fees.

Although the use of distribution funds for training is allowable under state law and the compacts, the Office of Problem Gambling did not ensure the amounts of these catering expenditures were reasonable.

Notwithstanding, the Office of Problem Gambling was unable to provide evidence that it made an effort to ensure that its costs for its training conferences were reasonable. The office needs to be prudent when using its funds: the more funding the office spends on conferences, the less it can use for prevention and treatment services. Although state law exempts the office's contracts for implementing the problem gambling programs and training from competitive bidding requirements, the substance and addiction prevention branch chief indicated that she believes that prior management would have obtained quotes from several vendors to determine which option would be the most reasonable given the office's budget and business needs. However, for both training conferences, the office was unable to provide evidence demonstrating that it ensured these costs were reasonable. The office was unable to provide documentation indicating that it requested quotes from multiple vendors for the 2019 training summit. Although the office received proposal materials from several vendors for its 2020 training summit, it was unable to provide documentation demonstrating that it selected the vendor that ensured that these costs were reasonable. Consequently, the office did not demonstrate that the catering costs were reasonable for its use of distribution fund revenues in 2019 and 2020.

Please refer to the section beginning on page 3 to find the recommendations that we have made as a result of these audit findings.

The State Has Not Ensured That Tribal Payments Align With Its Regulatory Costs

Key Points

- The State collected $34 million more in distribution fund fees from tribes than it spent on regulatory costs in 2021, in part because some tribes paid fees based on formulas that are not directly tied to regulatory costs. This surplus revenue contributed to the distribution fund's excessively large balance.
- The different distribution fund fee formulas have caused some tribes with similarly sized gaming operations to pay significantly different amounts in distribution fund fees.
- Some tribes continue to pay additional fees into the distribution fund despite the fund's solvency.

Recently, the State Has Collected More in Distribution Fund Fees Than It Has Spent on Regulatory Costs

The State's collection of distribution fund fees from gaming tribes is greater than its expenditure on regulatory costs. Compacts between tribes and the State generally require gaming tribes to make payments into the distribution fund to cover the State's regulatory costs. These costs, which are based on the total distribution fund appropriations in the immediately preceding fiscal year, were $35.5 million in 2021. However, gaming tribes paid about $69.7 million in distribution fund fees that same year, creating an excess of about $34 million. The State's collection of excess fees is one driving factor behind the excessive fund balance that we describe in the previous section. Without changes, collections of distribution fund fees will likely continue to significantly exceed the State's regulatory costs in 2022 and subsequent years.

Methodologies for Distribution Fund Fee Payment

Tribes generally pay into the distribution fund based on either of the following formulas:

- **Pro rata share formula:** The distribution fund fee is based on a tribe's percentage of the State's total gaming devices in a given fiscal year multiplied by the amount of distribution fund appropriations in the same fiscal year.
- **Net winnings formula:** The distribution fund fee is determined by a tiered system of average gaming device net winnings, with a higher payment percentage required for larger gaming operations.

Source: Tribal-state gaming compacts.

Each gaming tribe's distribution fund fees are determined by a formula within its compact. As the text box shows, gaming tribes generally pay based on one of two formulas. Some tribes pay based on their pro rata, or directly proportional, share of the total number of gaming devices they operate in the State (pro rata share formula).[8] The pro rata share formula considers the proportion of the State's

[8] The pro rata share and net winnings formulas are based only on the number of Class III gaming devices, commonly referred to as *slot machines*.

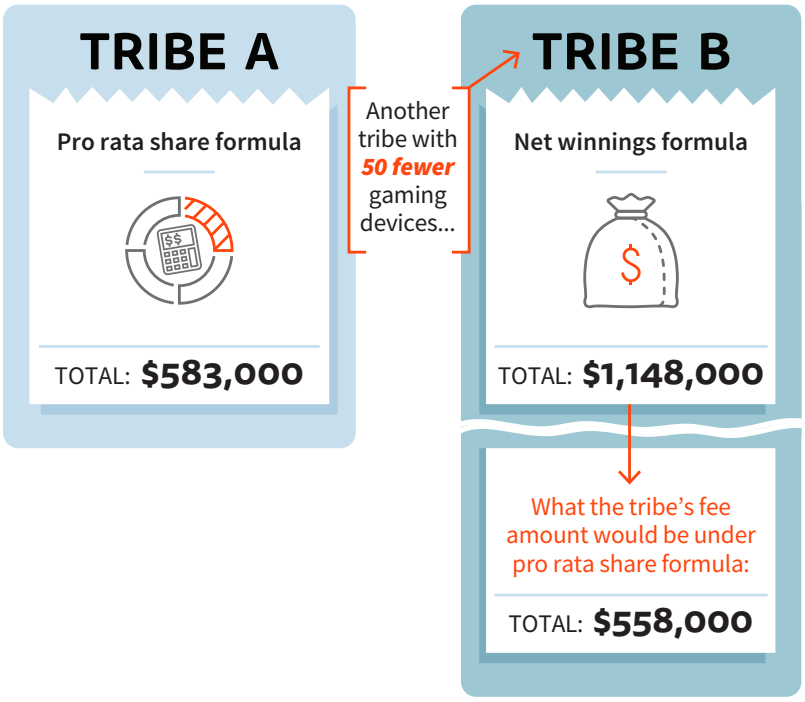
gaming devices that each tribe operates to be representative of the tribe's gaming activity and calculates each tribe's distribution fund fees accordingly. The compacts for tribes subject to the pro rata share formula indicate that this calculation is a reasonable metric for the tribe's proportional share of regulatory costs. Other tribes pay fee amounts based on net winnings per gaming device (net winnings formula). In contrast to the pro rata formula, the net winnings formula does not have a direct relationship to regulatory costs.

Some gaming tribes' compacts do not require them to pay any distribution fund fees. A gaming tribe may not currently pay distribution fund fees for one of two reasons. First, some tribes whose compacts include the net winnings formula are required to pay fees only for those gaming devices—above a threshold of 200 devices—that they operated as of September 1, 1999. These tribes are not required to pay fees on any machines they began operating after that date. Second, tribes subject to the pro rata share formula that operate fewer than 350 gaming devices may have their fees reduced or eliminated in certain years. Specifically, state law allows the Gambling Commission, upon approval from Finance, to reduce or eliminate on a proportionate basis the fees for these tribes if Finance determines the distribution fund has sufficient available funding.

As a result of the different ways the fees are calculated, the fee formulas cause some tribes with similarly sized gaming operations to pay significantly different amounts of distribution fund fees.

As a result of the different ways the fees are calculated, the fee formulas cause some tribes with similarly sized gaming operations to pay significantly different amounts of distribution fund fees. Our review of tribal payments found 12 instances in which tribes with similar numbers of gaming devices paid significantly different amounts. In each instance, the tribe that paid based on net winnings paid more than a tribe with a similarly sized gaming operation that paid using the pro rata formula. For example, as Figure 5 shows, Tribe A and Tribe B operated similar numbers of gaming devices in 2021. However, Tribe B—which paid fees according to the net winnings formula—paid $1.1 million in distribution fund fees, almost double Tribe A's payment amount of $583,000. If Tribe B had paid its distribution fund fees using the pro rata share formula, it would have paid only $558,000, which is slightly less in distribution fund fees than Tribe A paid. Therefore, because fees for tribes subject to the net winnings formula are not directly tied to those regulatory costs, the State has collected more in distribution fund fees than it spent in regulatory costs.

Figure 5
Different Methodologies Resulted in Significantly Different Distribution Fund Fee Amounts for Tribes With Similar Gaming Operations in 2021



Source: Auditor analysis of tribal invoices for 2021 distribution fund payments and compacts between tribes and the State.

The State's recent actions indicate that it is moving toward more compacts that use the pro rata share formula. The formula currently in a given compact is largely dependent on when that compact was executed. According to the Governor's Office's senior advisor for tribal negotiations, the original compacts that the State executed with tribes in 1999 all contained the net winnings formula. Beginning around 2012, new compacts that the State has executed with tribes have generally contained the pro rata share formula. In March 2022, the Governor announced the signing of updated compacts with two tribes and, in June 2022, of a new compact with a third tribe. The updated compacts changed these tribes' distribution fund fee methodology from the net winnings to the pro rata share formula, and the new compact also contains the pro rata share formula.

Because newer compacts include the pro rata share formula, and because a given tribe's fee formula is only one aspect of the compact negotiation process, we do not make a formal recommendation that the State transition all tribes to the pro rata formula. Additionally, because some tribes operate gaming devices but do not pay distribution fund fees, instituting the pro rata share formula for all

paying tribes could create a new imbalance in the fund. Nevertheless, in general, if it continues to transition existing and future compacts to the pro rata share formula, the State will ensure that distribution fund fees more closely align to its regulatory costs on an annual basis. Without additional action, the excessive balance will still exist, but the growth due to excessive annual collections will be reduced as the State transitions tribes away from the net winnings formula.

Required Additional Payments From Some Tribes Have Contributed to the Excessive Reserve

Some tribes have paid additional fees into the distribution fund despite the fund's solvency. Our review of tribal payments and compacts identified four gaming tribes that are required to make additional payments into the distribution fund beyond their standard distribution fund fees. These payments totaled $2.6 million in 2021. The purpose of these additional payments is to ensure that the fund remains solvent. Under these tribes' compacts, the State and the tribes agreed to meet to make an appropriate reduction in these additional payments if the distribution fund had sufficient pro rata funding to fulfill its purposes for at least three consecutive years. The State and one tribe agreed that the fund had met this condition as of January 2021. Under this new agreement, that tribe has not been required to make the additional payments. However, the other three tribes are still making the additional payments.

The three tribes that continue to make the additional payments may not know when they can renegotiate the relevant compact provision.

The three tribes that continue to make the additional payments may not know when they can renegotiate the relevant compact provision, in part because the compacts do not specify who is responsible for determining when the conditions requiring these extra payments have been met. We believe that the distribution fund's high balance, combined with the State's determination that the fund no longer requires extra payments for one of the four tribes, indicate that the other three may seek to reduce or eliminate these payments. Because Finance has general powers of supervision over the State's financial and business policies, it could determine annually whether these conditions have been met and then notify the Governor's Office of its determination. Doing so would also help prevent future increases to the already excessive fund balance.

Please refer to the section beginning on page 3 to find the recommendations that we have made as a result of these audit findings.

Public Health Has Not Demonstrated That It Is Effectively Monitoring Its Problem Gambling Prevention and Treatment Programs

Key Points

- The Office of Problem Gambling lacks a formal approach to program evaluation that incorporates best practices, such as setting measurable goals or frequently evaluating progress toward meeting these goals. Because the office has not incorporated best practices, it does not know whether its attempts to improve those programs have been effective.

- The Office of Problem Gambling lacks data on the number of individuals who are currently suffering or have recently suffered from problem gambling—information that would help it better identify which populations need problem gambling prevention or treatment services and the factors that contribute to problem gambling. Although it has taken recent steps to obtain these data, the office could make other efforts to assess the reach of its services.

The Office of Problem Gambling Cannot Adequately Assess Its Effectiveness

Although the Office of Problem Gambling and the Californians it is supposed to assist would likely benefit from rigorous evaluation of the programs it develops, we found weaknesses in the way that the office has approached such evaluation. State law requires the office to develop prevention and treatment programs for California residents who have a gambling disorder or who experience adverse psychiatric or physical impacts because of another person's gambling disorder. It must also evaluate the effectiveness of the services provided through its gambling disorder prevention and treatment programs. In light of these requirements, we reviewed the approach the office has taken to evaluate its programs to determine whether it evaluated itself against specific and measurable goals, whether its evaluations were timely, and whether the evaluations resulted in updates to its programs.

We found the Office of Problem Gambling's evaluation efforts to be ineffective. Most importantly, the office evaluates its programs against nonspecific goals that cannot be easily measured. The office does include its mission and the goals for its programs in its strategic plans, which generally cover a five-year period. However, our review of its most recent strategic plan and program evaluations determined that the office has not quantifiably measured its progress at achieving its goals. We identified strategic planning best practices closely related to the measurement of effectiveness of program services. As Figure 6 shows, the office did not incorporate several of these strategic planning best practices in its program evaluation efforts.

Figure 6
The Office of Problem Gambling Has Not Incorporated Key Best Practices Into Its Strategic Plan

Best Practice	Implemented by Office of Problem Gambling?	Outcome
Prepare mission statement.	✓	Office has a broad purpose on which it can base goals, strategies, and activities.
Agree on small number of broad goals.	✓	Office agreed on eight goals (four for each program), which identify critical issues related to gambling disorders.
Develop strategies to achieve broad goals.	✓	Office strategies include a helpline, media awareness campaign, treatment services, research, and trainings.
Develop objectives with quantitative metrics.	X	Office's ability to identify its progress toward meeting its goals is compromised.
Schedule annual assessments.	X	Office faces an increased risk that it will not identify issues until a significant amount of time has passed.
Assess effectiveness of services provided through its programs.	X	Office is unable to demonstrate whether its programs justify their costs.
Monitor progress and indicate whether goals were met.	X	Office is less able to demonstrate whether a goal was accomplished or how much work remains.

Source: Office of Problem Gambling Strategic Plan 2016–2020, Finance's *Strategic Planning Guidelines*, and best practices from the GFOA's *Establishment of Strategic Plans* and the federal General Services Administration's Performance Framework.

These best practices suggest that strategic plans include goals with specific objectives and the measurable results to be achieved. However, the Office of Problem Gambling's goals and objectives do not contain this information. For example, one of the office's goals is to deliver problem gambling prevention and education services to high-risk and affected populations with an objective of collaborating with community-based organizations. Neither the goal nor its objective includes any quantifiable measurements, such as how many Californians the office planned to serve or the number of organizations with which it was aiming to collaborate. When the office evaluated its progress related to this objective, it indicated it collaborated with several organizations, but it did

not state whether it met the goal, indicate the amount of work remaining, or provide any measurable outcomes to show that its measures were effective.

Because it has not evaluated itself against measurable goals, the office is unable to accurately identify the progress its programs are making. Its former acting chief, now at Public Health's Center for Healthy Communities, explained that the office did not consider structuring its program goals with quantifiable measurements during the strategic plan design process. Nonetheless, she indicated that it would be feasible for the office to adopt goals with quantifiable measurements and to prepare estimates of work remaining to meet those goals.

Further, the Office of Problem Gambling's evaluations are infrequent, reducing their value to the leadership of the office and of Public Health. Strategic planning best practices indicate that organizations should monitor their progress toward their goals annually. However, the office evaluates its strategic plan goals only at the conclusion of its strategic plan period, which historically has been every five years. By not preparing evaluations more frequently, the office increases the risk that it will not identify problems in meeting its goals until a significant amount of time has passed. More frequent evaluations could also provide feedback to the Office of Problem Gambling that would alert it earlier to changes it may need to make to its programs and services.

By not preparing evaluations more frequently, the Office of Problem Gambling increases the risk that it will not identify problems in meeting its goals until a significant amount of time has passed.

Infrequent evaluations combined with the absence of specific measurable goals reduce accountability for program performance during the period between evaluations. According to the former acting chief, the office had not performed evaluations more frequently because she was not aware of any requirement for it to do so in state law. She further explained the office has published its existing evaluations because of its commitment to transparency and information sharing. However, the infrequency of the office's evaluations limits its ability to meet this commitment. The office's current chief explained that while feasible, its ability to perform comprehensive program evaluations on an annual basis may be hindered by data limitations, and that it would be possible to conduct evaluations every two years. Although best practices suggest entities evaluate their strategic plans annually, biannual evaluations would allow the office to identify potential issues significantly sooner than every five years.

Moreover, the Office of Problem Gambling cannot show that its evaluation of its programs and services has any direct connection to improvements in those programs and services. According to the former acting chief, the office evaluates contractor service reports and discusses the results of its review through internal

email correspondence and with its Advisory Group, which includes representatives from state regulatory agencies, researchers and advocates for problem gambling prevention and treatment, representatives from community organizations, and gambling industry personnel. This group meets on a quarterly basis to develop priorities and strategies for problem gambling prevention and treatment programs. As part of our review, we requested evidence showing the office internally discussed its review of the fiscal year 2019–20 treatment services report. The office provided email correspondence in which it discussed the report with the University of California, Los Angeles, Gambling Studies Program, which is its treatment services contractor. According to the office's former chief and former acting chief, this contractor provides the office clinical consultation for its treatment program and contracts with service providers. However, the correspondence does not demonstrate how the office used the information from the report to make improvements. In addition, the office does not record Advisory Group meeting minutes. As a result, the office was unable to demonstrate how its evaluations or the actions it has taken as a result of them have assisted it in evaluating and improving its programs.

The Office of Problem Gambling lacks a current strategic plan.

Notably, the Office of Problem Gambling lacks a current strategic plan. The office's most recent strategic plan ended in 2020, and according to its current chief, the office's chief at the time and several staff were redirected to support other work within Public Health during the COVID-19 pandemic. This redirection led to delays in the office developing a new strategic plan as well as in its completion of its most recent program evaluation. The office's current chief stated that the office is using the most recent strategic plan as a model until it develops the next strategic plan because the most recent plan contains purposeful goals and objectives. She further explained that she plans to begin development sessions for the next strategic plan in September 2022. Without an updated strategic plan, the office lacks critical guidance for its programs and cannot effectively evaluate whether the funding it spends to counteract problem gambling is accomplishing its purpose.

Finally, the Office of Problem Gambling lacks formal guidance for program management and evaluation. The office does not have any policies or procedures that guide the quarterly Advisory Group meetings, the development and assessment of its strategic plans, and the evaluation of its programs for these processes. According to the former acting chief, executive management who were leading the strategic planning and evaluation processes guided staff based on their expertise. However, as we note above, we found weaknesses in these processes, such as not identifying quantifiable metrics with which to measure progress and effectiveness and program evaluations that do not incorporate best practices. Until the office

addresses these weaknesses, they will continue to hamper the office's efforts to ensure it operates effective programs that are continually improving.

The Lack of Current Data on Problem Gamblers Hinders the Office of Problem Gambling's Efforts to Assess the Need for Its Services

The Office of Problem Gambling could do more to determine the extent of the State's need for problem gambling services. According to the office's former acting chief, more than one million Californians have suffered from a gambling disorder at some point in their lives. However, the office lacks data on the number of individuals who are currently suffering or who have recently suffered from problem gambling. The office's estimate is based on a 2006 study it commissioned on gambling prevalence. This study was intended to assess the extent and impact of problem gambling among adults in California, with subsequent adjustments for California's population growth since 2006.[9] The former acting chief acknowledged that having more recent prevalence data would help it better identify which populations need problem gambling prevention or treatment services and the factors that contribute to problem gambling. She stated that the office currently tracks demand for its services—the number of individuals who seek and receive treatment. However, the office lacks data identifying the number of individuals who may need problem gambling services. The office indicated it began participating in a new prevalence study survey in 2020 but does not anticipate receiving preliminary data from this survey until 2023, or 17 years after the last study.

The Office of Problem Gambling lacks data identifying the number of individuals who may need problem gambling services.

Without more recent data, the Office of Problem Gambling is less able to determine whether its programs are reaching a significant portion of the Californians who may need its services. The office's treatment program provides services to individuals through outpatient, residential, and telephone care options, and it also researches new products and training methods related to problem gambling treatment. The office's prevention program includes a problem gambling helpline, outreach and public awareness campaigns, and problem gambling training and education. The office's current chief stated that the office measures the number of individuals who receive treatment for problem gambling disorders through its treatment program and the number of intake contacts, such as calls or texts, to its prevention program helpline. Helpline statistics indicate that its prevention program received 3,631 intakes in 2019 and that its treatment program served 1,122 individuals

[9] *2006 California Gambling Prevalence Study*, National Opinion Research Center at the University of Chicago, August 2006.

in fiscal year 2019–20; 248 of those who received treatment were individuals affected by problem gamblers, such as a spouse or family member.

However, while its current tracking approach measures the demand for services, the office is not able to evaluate these numbers or set reasonable service targets based on actual, demonstrated need because it does not have recent complete data. The former acting chief stated that the office does not have a specific target number of individuals to whom it would like to provide treatment and that its focus is to use its current funding to maximize its outreach efforts by removing outreach barriers. The current chief stated that the office tries to remove barriers by conducting outreach to individuals in need in a way that is convenient to or preferred by them, including by publishing online resources, translating materials into different languages, and making materials accessible through a cell phone. Further, she stated that the office can measure the effectiveness of its outreach on a limited basis, such as by measuring increases in helpline calls or website visits after installing a billboard that advertises its programs. However, the lack of a meaningful target again prevents the office from reliably assessing whether its outreach efforts have been effective.

The Office of Problem Gambling could take additional steps to assess the reach of its services while it awaits more current data.

The Office of Problem Gambling could take additional steps to assess the reach of its services while it awaits more current data. For example, it could determine whether it is providing services to a reasonable number of individuals by comparing its programs to those in other states. Its current chief asserted that the office could perform such comparisons but that it would be difficult to compare helpline data and treatment reports to other states, if they exist. She explained that the office would need to account for size, geographic, economic, and demographic differences in population and that California is unique in these areas. Further, the chief explained it could draw comparisons only to national organizations, such as the National Council on Problem Gambling, because of California's unique population characteristics and the National Council's reach, population, and datasets.

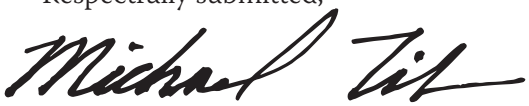
However, we believe the office could account for these differences in its analysis. The U.S. Census Bureau maintains data on demographic, economic, and population statistics by state, allowing users to compare these statistics between states. The office could compare its approaches and its helpline and treatment report statistics with those of other states and make adjustments for different demographic factors such as population or economic differences. For example, if another state had a greater success rate with a different approach, the office could determine whether it could incorporate elements of the other state's approach in its own programs. Until the office obtains data on the total number

of individuals who are currently suffering or who have recently suffered from problem gambling, comparisons to other states could provide potential best practices as well as useful context about the number of Californians the office serves.

Please refer to the section beginning on page 3 to find the recommendations that we have made as a result of these audit findings.

We conducted this performance audit in accordance with generally accepted government auditing standards and under the authority vested in the California State Auditor by Government Code section 8543 et seq. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on the audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Respectfully submitted,



MICHAEL S. TILDEN, CPA
Acting California State Auditor

August 25, 2022

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Appendix

Scope and Methodology

The Joint Legislative Audit Committee (Audit Committee) directed the California State Auditor to conduct an audit of the Gambling Commission, Justice, Public Health, and other agencies to review the State's management and use of the distribution fund and its administration of gaming compacts. The table below lists the objectives that the Audit Committee approved and the methods we used to address them.

Audit Objectives and the Methods Used to Address Them

	AUDIT OBJECTIVE	METHOD
1	Review and evaluate the laws, rules, and regulations significant to the audit objectives.	Reviewed and evaluated federal law; state law; and relevant policies, procedures, and guidelines related to the distribution fund.
2	Evaluate the State's management of the distribution fund by determining all of the following: a. For the last three fiscal years, the total amounts from the distribution fund appropriated to each state agency receiving funds. b. To the extent possible, whether state entities' uses of distribution fund money complied with tribal-state gaming compacts. c. Whether any funds deposited into the distribution fund have been distributed to an agency, commission, or department not expressly authorized by tribal-state gaming compacts, regardless of whether the distribution was an appropriation, loan, or other transfer.	• Reviewed state budgets to determine the amount of distribution funds appropriated to each agency in fiscal years 2019–20, 2020–21, and 2021–22. • Reviewed compacts for a selection of 20 tribes and determined the allowable uses for distribution funds per the compacts. • Compared the agencies and funds that received distribution funds from fiscal years 2018–19 through 2020–21 against the allowable uses for the distribution funds to determine whether the appropriations were to authorized agencies and for allowable purposes. We did not identify any inappropriate distributions. • Reviewed 15 distribution fund expenditures each at the Gambling Commission, Justice, and the Office of Problem Gambling from fiscal years 2018–19 through 2020–21 and compared them against allowable uses of distribution funds per compacts and state law. We did not assess the reliability of this data. However, we gained assurance that the expenditure data the Gambling Commission, Justice, and the Office of Problem Gambling provided us were materially complete. • Reviewed budgets, fund condition statements, and other financial records related to the distribution fund for the Gambling Commission, Justice, and the Office of Problem Gambling for fiscal years 2018–19 through 2020–21 to determine whether the entities further transferred distribution funds through appropriations, loans, or other transfers. We compared the entities' transfers against allowable uses of distribution funds in compacts and state law. • Interviewed Gambling Commission, Justice, and Public Health staff to determine whether the entities further dispersed distribution funds through appropriations, loans, or other transfers.

continued on next page . . .

	AUDIT OBJECTIVE	METHOD
3	For the Gambling Commission, Justice, and Public Health, evaluate their uses of distribution fund money by doing the following: a. Determine the activities each agency undertook in performing its duties related to tribal-state gaming compacts and the costs of these activities, including a detailed description of the activities supported by the distribution fund. b. Identify how each agency allocates the funding from the distribution fund to each of the activities identified in 3(a) and the amount allocated for each activity. Also determine the amounts allocated from other sources for these activities. c. Determine how each agency measures its workload for the activities identified in 3(a) and, to the extent possible, compare the workload related to tribal-state compacts to each agency's workload for similar activities related to the regulation of horse racing, the California State Lottery, and card rooms.	• Reviewed lists of activities from the Gambling Commission, Justice, and Public Health, where available, and interviewed staff to identify the duties and responsibilities each entity performs related to tribal gaming compacts and activities supported by the distribution fund. • Reviewed state budget documents to identify the amounts appropriated from the distribution fund to the Gambling Commission, Justice, and Public Health and descriptions for the activities supported by the appropriations. We interviewed relevant staff and reviewed internal financial and workload documentation from each entity to determine how it allocated distribution fund appropriations and funding from other sources to activities related to tribal gaming compacts. We determined the following: – The Gambling Commission received appropriations from the distribution fund and the gambling control fund. According to the Commission's executive director, it used distribution funds to support its tribal gaming regulatory activities and used gambling control funds to regulate card rooms. – Bureau staff indicated that its activities are funded through the distribution fund and the gambling control fund. – The Office of Problem Gambling received $289,000 from nondistribution fund sources for each fiscal year from 2018–19 through 2021–22 to support its programs. This amount accounted for less than 5 percent of the office's total funding. • Interviewed Gambling Commission, Justice, and Public Health staff and reviewed workload analyses, where available, to identify the proportion of work spent on distribution fund activities compared to the regulation of horse racing, the California State Lottery, and card rooms. We determined the following: – We did not identify any duties staff at the Gambling Commission, Justice, and Public Health perform related to the regulation of horse racing and the California State Lottery. – In fiscal year 2020–21, the Gambling Commission charged 44 percent of its staff time on activities related to tribal gaming regulation and 56 percent related to card room regulation. Staff at the Office of Problem Gambling indicated that all of its workload is for managing its problem gambling programs and did not identify any regulatory activities it performs related to tribal gaming regulation or card room regulation.
4	Evaluate the State's administration of tribal-state compacts by doing the following: a. Identify and evaluate how the Gambling Commission determines each tribe's pro rata share of the State's regulatory costs received by the State from tribes pursuant to tribal-state gaming compacts or secretarial procedures. b. Determine whether some tribes with gaming compacts are paying more than their pro rata share of the State's regulatory costs.	• Interviewed staff at the Gambling Commission and the Governor's Office to determine how distribution fund fees were determined and the basis for different formulas that the tribes use. • Interviewed staff at the Gambling Commission and reviewed invoices to determine how the Gambling Commission calculates each tribe's pro rata share of the State's regulatory costs. • Reviewed compacts, invoices, and other financial records and documents for a selection of 20 tribes and evaluated whether the distribution fund fee amounts paid by the tribes were consistent with their compacts. The amounts paid were generally appropriate. However, one tribe erroneously paid more than it owed, and another tribe paid less than it was charged because it disputed the fee amount. • Reviewed compacts, invoices, and other financial records and documents for all 79 tribes with active compacts to determine whether tribes paid more than their pro rata share of the State's regulatory costs for 2021. Because the Gambling Commission informed us that gaming tribes' device numbers and fee payments are confidential, we do not present that information in detail in this report.

	AUDIT OBJECTIVE	METHOD
5	Assess the appropriateness and effectiveness of Public Health's Office of Problem Gambling's expenditures of distribution fund money. Determine whether the Office of Problem Gambling is providing services to a significant number of individuals.	• Interviewed Office of Problem Gambling staff and reviewed its strategic planning documents to assess its program evaluation process for its prevention and treatment programs. • Reviewed 15 total Office of Problem Gambling expenditures from fiscal years 2018–19 through 2020–21 selected under objective 2 to determine the appropriateness of the office's expenditures. • Reviewed data related to the statewide prevalence of problem gambling to determine whether the office is providing services to a significant number of individuals who may need those services.
6	Evaluate Justice's oversight of distribution fund expenditures and determine whether the State is levying appropriate fees on tribes by doing the following: a. Determine what led employees of Justice to charge the distribution fund for card room activities, as identified in audit report 2018-132, and determine whether Justice has returned the funds to the distribution fund. b. Determine when and how officials at the Bureau came to know that employees were not charging their time in accordance with their positions' funding sources. c. Assess the impact on the State's calculation of fees levied on tribes from Justice's charges to the distribution fund as identified in audit report 2018-132.	• Reviewed the Bureau's financial records to determine whether it appropriately reimbursed the distribution fund for time that tribal employees spent on nontribal activities during fiscal years 2015–16 through 2017–18, as identified in audit report 2018-132. • Reviewed the Bureau's timekeeping and financial records for fiscal years 2018–19 through 2020–21 to determine the amount of time that tribal employees spent performing nontribal activities and the extent to which the Bureau appropriately reimbursed the distribution fund for that time. • Reviewed documentation and interviewed Bureau staff regarding its discovery of employees inappropriately charging the distribution fund for nontribal activities and evaluated the measures it has taken to correct that problem. • Reviewed the Bureau's financial records for fiscal years 2018–19 through 2020–21 and the means through which tribes pay fees into the distribution fund to evaluate the extent to which the Bureau's inappropriate charges to the distribution fund may have affected those fees.
7	Assess the reasonableness of the reserve balance of the distribution fund. Determine why the State has not appropriated funds from the distribution fund for allocation to local community benefit committees for awarding of grants to mitigate gaming impacts.	• Reviewed distribution fund financial statements to identify fund balance levels, revenue, and expenditures over the past 13 years. Compared the current fund balance level to best practices for maintaining sufficient reserves. • Interviewed Finance and Gambling Commission staff to determine why the State stopped allocating distribution funds to local community benefit committees.
8	Review and assess any other issues that are significant to the audit.	None identified.

Source: Audit workpapers.

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ROB BONTA
Attorney General

State of California
DEPARTMENT OF JUSTICE

BUREAU OF GAMBLING CONTROL
2450 DEL PASO ROAD, SUITE 100
SACRAMENTO, CA 95834
TELEPHONE: (916) 830-9066

August 10, 2022

Michael S. Tilden, CPA*
Acting California State Auditor
621 Capitol Mall, Suite 1200
Sacramento, CA 95814

RE: Draft Audit Report - California State Auditor Report 2021-102; Indian Gaming Special Distribution Fund

Dear Mr. Tilden,

The Department of Justice (DOJ) appreciates the opportunity to provide comments to the above-mentioned draft audit report. Our copy of the draft report contains only the portions that refer directly to the DOJ. Accordingly, we respectfully offer the below comments which are limited to those excerpts.

Recommendation to the Legislature:

To determine the amount for the nontribal activities that the Bureau paid for using the distribution fund during fiscal years 2015-16 through 2019-20, the Legislature should require the Department Of Justice's Bureau of Gambling Control to calculate and report that information to the Legislature by April 2023. To compensate the distribution fund for these improper expenditures, the Legislature should then create a special appropriation to reimburse the distribution fund.

Response:
Should the Legislature require this information, the Bureau will provide the report and calculations.

Recommendation to DOJ:

To ensure that it compensates the distribution fund for improper charges for nontribal activities including card room and other enforcement activities, by October 2022 the Bureau should:

1. *Reimburse the funds due to the distribution fund for time that employees spent working on nontribal activities during fiscal years 2020-21 through 2021-22.*

Response:
Based upon the interpretation of nontribal activities as outlined in the report, the Bureau is conducting a review of its prior office corrections for fiscal years 2020-21 through 2021-22. Utilizing the criteria as outlined in the report, the Bureau will reimburse the fund for the nontribal activities by October 2022. We, however, agree with the audit that

* California State Auditor's comment appears on page 43.

the nontribal activities charged to the Fund represent only a small percentage of the Bureau's annual appropriation.

2. *Establish and implement a policy requiring supervisory review and approval of its periodic reimbursements to the distribution fund, as necessary, for time that employees spend on nontribal activities.*

Response:
On August 9, 2022, the Bureau's Compliance and Enforcement Assistant Director implemented a California State Auditor approved policy outlining the process of correcting Compliance and Enforcement Section hours that do not correspond with their funding source. The policy requires that an analyst in the Administrative Services Unit prepare a report on a quarterly basis based on information obtained from the Time Reporting System. The report includes the amount of hours staff worked on a particular task in order to determine the appropriate dollar amount requiring correction. The policy also requires that the Administrative Services Unit Manager review and approve the report prior to submitting to the Department's Accounting Office. ①

To ensure that its employees allocate their activities to the correct funding sources, the Bureau should:

3. *Formalize procedures for employees on how to properly track their time, including which activities may be charged to the distribution fund, and provide training on those procedures by October 2022.*

Response:
On August 9, 2022, the Bureau's Compliance and Enforcement Assistant Director distributed an updated policy to his staff outlining the requirements for submitting time into the Division of Law Enforcement's Time Reporting System. The policy describes the ways in which staff must delineate program and activity codes to reflect work performed outside their funding source. In addition, the policy requires that a Special Agent Supervisor review staff's time prior to approval. Moreover, the policy requires that the Special Agent in Charge perform a quarterly audit of time submissions. Procedures to comply with this policy are in process and will be distributed in coordination with staff training by October 2022. ①

4. *Conduct quarterly audits of employee timekeeping to ensure that employees appropriately track their time and that supervisors appropriately review and approve employee timesheets, beginning with the first quarter of fiscal year 2022-23.*

Response:
As indicated above, the Special Agent in Charge will be conducting quarterly audits of the Time Reporting System to ensure staff are accurately reporting their time and supervisors are properly approving time. This task will commence at the end of the first quarter of fiscal year 2022-23 as recommended.

August 10, 2022
California State Auditor Report 2021-102
Page 3

5. *Continue with its planned rollout of a new timekeeping system in January 2025 and ensure that the new system does not allow employees to charge nontribal activities to the distribution fund.*

Response:
As reported during the Gambling Control Fund audit, the Bureau pursued the development of a new system. Additionally, the Bureau continues to work towards creating a new timekeeping system that will require employees to designate the appropriate funding source for hours worked. These requirements were addressed during planning sessions with the system development team.

6. *To ensure that it uses the distribution fund only for appropriate purposes, the Bureau should cease its use of the fund to pay for nontribal activities and instead pay for those activities using an appropriate source, such as the General Fund.*

Response:
Based upon the interpretation of nontribal activities, the Bureau has discontinued the use of the distribution fund for gambling law enforcement investigations. As previously stated, the Bureau has released an updated policy outlining the requirements for properly documenting time associated with these types of investigations. The Bureau will work through the budget process as necessary to support nontribal activities. ①

If you have any questions or concerns regarding this matter, you may contact me at the telephone number listed above.

Sincerely,

Yolanda Morrow
YOLANDA MORROW
Director

For ROB BONTA
Attorney General

Enclosure

cc: Venus D. Johnson, Chief Deputy Attorney General
Chris Prasad, CPA, CFE, Director, Office of Program Oversight and Accountability

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COMMENT

CALIFORNIA STATE AUDITOR'S COMMENT ON THE RESPONSE FROM THE CALIFORNIA DEPARTMENT OF JUSTICE

To provide clarity and perspective, we are commenting on Justice's response to our audit. The number below corresponds to the number we have placed in the margin of Justice's response.

Justice did not provide us with the policies it states it has recently implemented or updated. Accordingly, we have not evaluated or approved these policies. As we describe on page 18 of our report, we found that the Bureau lacks a policy requiring a separate individual to approve expenditure corrections. We will assess Justice's progress implementing such a policy when it provides us its 60-day, six-month, and one-year responses to our recommendations. (1)

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State of California—Health and Human Services Agency
California Department of Public Health

Tomás J. Aragón, M.D., Dr.P.H.
Director and State Public Health Officer

GAVIN NEWSOM
Governor

August 10, 2022

Michael S. Tilden
Acting California State Auditor
621 Capitol Mall, Suite 1200
Sacramento, CA 95814

Dear Mr. Tilden:

The California Department of Public Health (Public Health) has reviewed the California State Auditor's draft audit report titled "*Indian Gaming Special Distribution Fund: The State Could Better Manage the Distribution Fund and Its Problem Gambling Programs.*" Public Health appreciates the opportunity to respond to the report and provide our assessment of the recommendations contained therein.

Recommendation #1:

To ensure that its training conference expenditures are reasonable, the Office of Problem Gambling should, beginning with its next planned catering expenditure, obtain quotes from multiple vendors, document those quotes, and select the vendor that offers the best value.

Management Response:

Public Health agrees with this recommendation. While it has been the practice of the Office of Problem Gambling (Office) to obtain quotes from multiple vendors, the audit has demonstrated that record keeping and documentation could be improved. Office management will establish protocols for obtaining quotes, including protocols for record keeping and standards for evaluating best value.

Recommendation #2:

To ensure that it is able to adequately evaluate its progress toward meeting program goals in its next strategic plan, by February 2023, the Office of Problem Gambling should revise its existing goals. As a part of that process, the Office should require staff to do the following:

- Create policies or procedures that guide the quarterly Advisory Group meetings, the development and assessment of its strategic plans, and the evaluation of its programs for these processes.
- Create measurable goals with quantifiable metrics and include them in its strategic plans.
- Evaluate progress toward meeting its goals at least biennially.
- Include any effort remaining to meet program goals in its biennial evaluations.
- Record all Advisory Group meeting minutes and document decisions reached during these meetings.

Management Response:
Public Health agrees with this recommendation and projects to have a revised strategic plan by February 2023. The revised strategic plan will take into account recommendations made by the auditor, including an increased focus on specific and measurable goals. In addition, the Office will create a standardized process for strategic planning, including biennial evaluations and documentation of Advisory Group meetings and recommendations.

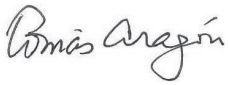
Recommendation #3:
To ensure that it can better identify which populations need problem gambling prevention or treatment services and the factors that contribute to problem gambling, the Office of Problem Gambling should, as soon as possible, obtain data on the number of Californians who currently or have recently suffered form problem gambling. The Office should also update this information annually and use it to identify the locations and populations most in need of program service and to evaluate how well it is serving that population. Until it obtains this information, the Office should take additional steps to determine whether it is providing services to a reasonable number of individuals by comparing its programs to those in other states.

Management Response:
Public Health agrees with this recommendation. The Office currently works with existing population-level surveillance studies to estimate prevalence of problem gambling behaviors, and will continue to do so. The Office will also take steps to evaluate California rates of services as compared to other states.

We appreciate the opportunity to respond to the audit. If you have any questions, please contact Mónica Vázquez, Deputy Director, Office of Compliance, at (916) 306-2251.

Michael S. Tilden
August 10, 2022
Page 3

Sincerely,



Tomás J. Aragón, M.D., Dr.P.H.
Director and State Public Health Officer

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DEPARTMENT OF FINANCE
OFFICE OF THE DIRECTOR

Gavin Newsom ▪ Governor
1021 O Street, Suite 3110 ▪ Sacramento CA 95814 ▪ www.dof.ca.gov

August 10, 2022

Michael Tilden
California State Auditor (Acting)
621 Capitol Mall, Suite 1200
Sacramento, California 95814

Re: Department of Finance Response to Draft Audit 2021-102

Dear Michael:

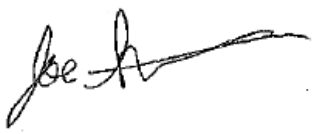
The California Department of Finance has received the California State Auditor's (CSA) draft findings concerning the Indian Gaming Special Distribution Fund (Fund). The below response addresses CSA's finding and recommendation on Finance's role with respect to the Fund.

CSA recommends that, by December 2022, Finance determine annually whether the Fund has satisfied the terms of relevant compacts and immediately notify the Governor's Office when these provisions have been met. While the recommendation does not specify the terms, the draft report discusses a provision within a tribe's compact that may require additional payments into the Fund to ensure the Fund remains solvent. That provision also allows the State and tribes to agree to make an appropriate reduction in these payments if the Fund has had sufficient pro rata funding to fulfill its purposes for at least three consecutive years.

Finance is confident that the Governor's Office and the tribes monitor the implementation of the compacts that they negotiated and executed and would seek information to determine whether the terms of the compacts are satisfied as necessary. Finance will, however, after consultation with the California Gambling Control Commission, notify the Governor's Office when the Fund has had sufficient pro rata funding to fulfill its purposes for at least three consecutive years.

Thank you for the opportunity to review this draft report. If you have any questions, please contact Amy Jarvis, Program Budget Manager.

Sincerely,



Joe Stephenshaw
Director